

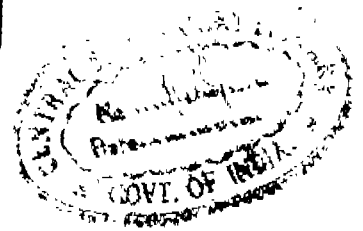


भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



सं० 3] नई दिल्ली, मंगलवार, मार्च 14, 1995/फाल्गुन 23, 1916
No. 3] NEW DELHI, TUESDAY, MARCH 14, 1995/PHALGUNA 23, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 14th March, 1995:—

BILL No. 10 OF 1995

A Bill further to amend the Patents Act, 1970.

WHEREAS India is a signatory to the agreement for the establishment of the World Trade Organisation including the Agreement on Trade Related Aspects of Intellectual Property Rights for the purpose of reduction of distortions and impediments to international trade and promotion of effective and adequate protection of intellectual property rights;

AND WHEREAS with a view to meeting India's obligations under the said Agreement while safeguarding its interests, it has become necessary to amend the Patents Act, 1970 in conformity with the obligations under the Agreement that signatory countries, in formulating or amending their laws and regulations, may adopt measures consistent with the said Agreement, necessary to protect public health and nutrition and to promote public interest in sectors of vital importance to their socio-economic and technological development;

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Patents (Amendment) Act, 1995.

(2) It shall be deemed to have come into force on the 1st day of January, 1995.

Short
title
and
com-
mence-
ment.

Amend-
ment of
section
5.

2. Section 5 of the Patents Act, 1970 (hereinafter referred to as the principal Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.”.

Insertion of
new
Chapter
IVA.

3. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER IVA

EXCLUSIVE MARKETING RIGHTS

Applica-
tion
for
grant
of exclu-
sive
rights.

24A. (1) Notwithstanding anything contained in sub-section (1) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (2) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(2) Where the Controller, on receipt of a report under sub-section (1) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(3) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (1) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24B.

Grant of
exclusive
rights.

24B. (1) Where a claim for patent covered under sub-section (2) of section 5 has been made and the applicant has,—

(a) where an invention has been made whether in India or in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent and the approval to sell or distribute the article or substance on the basis of appropriate tests conducted on or after the 1st day of January, 1995, in that country has been granted on or

after the date of making a claim for patent covered under sub-section (2) of section 5; or

(b) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted in India the patent therefor on or after the date of making a claim for patent covered under sub-section (2) of section 5,

and has received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(2) Where, the specifications of an invention relatable to an article or a substance covered under sub-section (2) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infringement of exclusive right to sell or distribute under sub-section (1):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to selling or distributing the same, the details of invention relatable thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

24C. The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:—

Compul-
sory
licences.

(a) throughout Chapter XVI.—

(i) working of the invention shall be deemed to be selling or distributing of the article or substance;

(ii) references to "patents" shall be deemed to be references to "right to sell or distribute";

(iii) references to "patented article" shall be deemed to be references to "an article for which exclusive right to sell or distribute has been granted";

(b) three years from the date of sealing of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B;

(c) the time which has elapsed since the sealing of a patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute under section 24B;

(d) clauses (d) and (e) of section 90 shall be omitted.

Special provision for selling or distribution.

24D. (1) Without prejudice to the provisions of any other law for the time being in force, where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (1) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than a person to whom exclusive right has been granted under sub-section (1) of section 24B, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

(2) The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf.

Suits relating to infringements.

24E. All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as if they are suits concerning infringement of patents under Chapter XVIII.

Central Government and its officers not to be liable.

24F. The examination and investigations required under this Chapter shall not be deemed in any way to warrant the validity of any grant of exclusive right to sell or distribute, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon."

Omission of section 39.

4. Section 39 of the principal Act shall be omitted.

Amendment of section 40.

5. In section 40 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of section 64.

6. In section 64 of the principal Act, in sub-section (1), in clause (n), the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of section 118.

7. In section 118 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be omitted.

Repeal and saving.

8. (1) The Patents (Amendment) Ordinance, 1994 is hereby repealed.

Ord. No.
13 of 1994

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

India has signed the agreement for the establishment of World Trade Organisation (WTO) including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). With a view to Agreement has come into force on 1st January, 1995. With a view to meeting India's obligations under the TRIPs Agreement, it has become necessary to amend the Patents Act, 1970.

2. One of the obligations of the Member countries is to provide, with effect from 1st January, 1995, means for filing of applications for patents in the areas of pharmaceuticals and agricultural chemicals, and, on fulfilling certain conditions by such applicants, granting of exclusive marketing rights (EMR) till the expiry of a period of five years or until the patent is granted or rejected, whichever is earlier. In India, the Patents Act, 1970 does not provide for grant of product patents in the field of agricultural chemicals and pharmaceuticals.

3. Government of India set up an Expert Group for making suggestions for safeguarding our interests while fulfilling our obligations and for making specific suggestions for amendments to the Patents Act, 1970. Government has considered the suggestions made by the Expert Group and while formulating measures to meet the obligations have provided for the following safeguards in public interest:—

(i) examination of applications to ensure that provisions of sections 3 and 4 of the Patents Act, 1970 are not violated;

(ii) for inventions made in India, the applicant does not have to obtain a product patent and marketing approval in some other country but has the option of obtaining a process patent for an identical invention in India;

(iii) deletion of section 39 of the Patents Act, 1970 which places restrictions on filing of applications for patents outside India;

(iv) Government intervention in case the EMR is used against public interest or in any other circumstance of extreme emergency; and

(v) extension of compulsory licensing provisions in the case of EMR also.

Since the measures were to be brought into force with effect from 1st January, 1995 in terms of our commitment in TRIPs Agreement and as Parliament was not in session, the President promulgated the Patents (Amendment) Ordinance, 1994 (Ord. 13 of 1994) on the 31st December, 1994.

5. The Bill seeks to replace the above Ordinance.

NEW DELHI;
The 7th March, 1995.

KRISHNA SAHL

FINANCIAL MEMORANDUM

The Bill seeks to add a sub-section, namely, sub-section (2) in the existing section 5, insertion of a new Chapter, namely, Chapter IVA deletion of section 39, amendments in sections 40, 64 and 118 of the Patents Act, 1970. The insertion of a new sub-section in section 5 and insertion of a new Chapter in the Patents Act, 1970 is expected to result in receipt of applications for product patents in agricultural chemical and pharmaceuticals and for grant of exclusive marketing rights and it may become necessary to strengthen the office of the Controller General of Patents, Designs and Trade Marks in terms of additional manpower and modern office equipments, etc., to handle the increased work-load, which may involve recurring and non-recurring expenditure from the Consolidated Fund of India. However, it is not possible, at this stage, to readily estimate this amount of expenditure which may have to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (1) of section 24A proposed to be inserted by clause 3 of the Bill empowers the Central Government to prescribe the form and manner of making applications and payment of fees in connection with applications for exclusive marketing rights. These matters relate to matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore of a normal character.

*Memorandum explaining the modifications contained in the Bill to replace
the Patents (Amendment) Ordinance, 1994*

The new sections 24B and 24C in Chapter IVA of the Patent Act, 1970 as proposed to be inserted by clause 3 of the Patents (Amendment) Bill, 1995 which seeks to repeal and replace the Patents (Amendment) Ordinance, 1994, contain certain modifications. These modifications are of a drafting and clarificatory in nature.

R. C. BHARDWAJ.
Secretary-General.

